SBCivil Writ Petition No.3602/2004

Preetam Singh & Anr.
V.
Smt. Saraswati Devi & Anr.

Date of Order :: 16th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Mahendra Trivedi, for the petitioners.
Mr. Chaitanya Gahlot, for the respondents.

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By this petition for writ validity, propriety and correctness of the order dated 3.3.2004 passed by Additional Civil Judge (JD) No.4, Jodhpur is questioned. The court below by order aforesaid rejected the application preferred by the petitioner to condone delay in filing written statement.

This Court while issuing notice to show cause to the respondents by order dated 19.10.2004 pleased to pass an interim order in favour of the petitioner in following terms:-

> "Meanwhile, if the petitioner deposits a cost of Rs.5000/- in the learned trial Court within two weeks from today, the written-statement already filed shall be treated to have been taken on record, and the learned trial Court shall accordingly proceed wit the trial expeditiously. However, if after depositing of the cost by the petitioner, the plaintiff still resists the taking of the written-statement on record, further

> proceeding in the trial Court shall remain stayed. It is made clear that if the cost is not deposited within two weeks, the writ petition will automatically stand dismissed without reference to the Court, and the impugned order shall revive."

In pursuant to the interim order passed by this Court the petitioner has already deposited a cost of Rs.5,000/- before the trial court. It is true that the petitioner failed to file written statement within the period prescribed and the trial court acted well within its jurisdiction in exercising discretion in not accepting the application for condonation of delay in filing the written statement. However, as the petitioner has already deposited the cost as ordered by the court, therefore, in interest of justice and to get the dispute adjudicated on merits effectively, I consider it appropriate to set aside the order dated 3.3.2004 and to take on record the written statement filed by the petitioner.

The writ petition is accordingly disposed of.

(GOVIND MATHUR),J.

kkm/ps.